

Assembly Bill No. 1388

Passed the Assembly September 7, 2011

Chief Clerk of the Assembly

Passed the Senate August 29, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 706.051 of the Code of Civil Procedure, and to amend Section 68632 of the Government Code, relating to judgment debtors.

LEGISLATIVE COUNSEL'S DIGEST

AB 1388, Wieckowski. Earnings withholding orders.

Existing law requires an employer to withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period of the employee that ends during the withholding period. Under existing law, the portion of the judgment debtor's earnings that the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt from the levy of an earnings withholding order. This exemption is not available if the debt was incurred for the common necessities of life furnished to the judgment debtor or the family of the judgment debtor.

This bill would delete that exception for the common necessities of life. This bill would, instead, provide an exception for a debt incurred pursuant to an order or award for the payment of attorney's fees in connection with certain family law proceedings. The bill would also make a conforming change.

The people of the State of California do enact as follows:

SECTION 1. Section 706.051 of the Code of Civil Procedure is amended to read:

706.051. (a) For the purposes of this section, "family of the judgment debtor" includes the spouse or former spouse of the judgment debtor.

(b) Except as provided in subdivision (c), the portion of the judgment debtor's earnings that the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt from levy under this chapter.

(c) The exemption provided in subdivision (b) is not available if any of the following exceptions applies:

(1) The debt was incurred pursuant to an order or award for the payment of attorney's fees under Section 2030, 3121, or 3557 of the Family Code.

(2) The debt was incurred for personal services rendered by an employee or former employee of the judgment debtor.

(3) The order is a withholding order for support under Section 706.030.

(4) The order is one governed by Article 4 (commencing with Section 706.070) (state tax order).

SEC. 2. Section 68632 of the Government Code is amended to read:

68632. Permission to proceed without paying court fees and costs because of an applicant's financial condition shall be granted initially to all of the following persons:

(a) A person who is receiving public benefits under one or more of the following programs:

(1) Supplemental Security Income (SSI) and State Supplementary Payment (SSP) (Article 5 (commencing with Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code).

(2) California Work Opportunity and Responsibility to Kids Act (CalWORKs) (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program (Section 10553.25 of the Welfare and Institutions Code).

(3) Food Stamps (Chapter 51 (commencing with Section 2011) of Title 7 of the United States Code) or the California Food Assistance Program (Chapter 10.1 (commencing with Section 18930) of Part 6 of Division 9 of the Welfare and Institutions Code).

(4) County Relief, General Relief (GR), or General Assistance (GA) (Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code).

(5) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI) (Chapter 10.3 (commencing with Section 18937) of Part 6 of Division 9 of the Welfare and Institutions Code).

(6) In-Home Supportive Services (IHSS) (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code).

(7) Medi-Cal (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(b) A person whose monthly income is 125 percent or less of the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of paragraph (2) of Section 9902 of Title 42 of the United States Code.

(c) A person who, as individually determined by the court, cannot pay court fees without using moneys that normally would pay for the common necessities of life for the applicant and the applicant's family. Only if a trial court finds that an applicant under this subdivision can pay a portion of court fees, or can pay court fees over a period of time, or under some other equitable arrangement, without using moneys that normally would pay for the common necessities of life for the applicant and the applicant's family, the court may grant a partial initial fee waiver using the notice and hearing procedures set forth in paragraph (5) of subdivision (e) of Section 68634. "Common necessities of life," as used in this article, shall be interpreted consistently with the use of that term in paragraph (1) of subdivision (c) of Section 706.051 of the Code of Civil Procedure, as that paragraph read prior to January 1, 2012.

Approved _____, 2011

Governor